# MINUTES BOATING AND WATERWAYS COMMISSION MEETING SACRAMENTO, CALIFORNIA January 18, 2007

Pursuant to due and regular notice, the meeting of the Boating and Waterways Commission was called to order by Chairman Purdon, on January 18, 2007, at 8:30 A.M., at the Hyatt Regency, 1209 L Street, Sacramento, California.

#### **ROLL CALL**

Commissioners Present: H.P. "Sandy" Purdon

Lenora S. Clark

Charles P. "Bud" Johnson

Douglas W. Metz Robert Y. Nagata Warren E. Rupf

Commissioner Absent: Edward C. Reno III

Department of Boating and

Waterways Personnel Present: Raynor Tsuneyoshi, Director

Joy Fisher, Staff Counsel

David Johnson, Deputy Director Steve Watanabe, Chief of Facilities

Harold Flood, Supervisor of Planning, Facility Division

Greg Imura, Staff Services Analyst

Margarita Sanchez, Administrative Assistant

## **CLOSED SESSION**

Chairman Purdon convened the meeting and welcomed new Commission member Douglas W. Metz to the Boating and Waterways Commission.

Chairman Purdon announced commencement of the closed session. Following completion of the closed session, Chairman Purdon continued the public portion of the meeting.

Chairman Purdon asked Mr. Johnson to review the minutes of the last three or four commission meetings and see where the Commission has asked for staff to provide information and report back with that information at the next commission meeting.

## **APPROVAL OF MINUTES**

**MOTION:** It was moved by Commissioner Clark and seconded by

Commissioner Johnson that the Boating and Waterways

Commission minutes of August 24, 2006, meeting be approved.

The motion carried unanimously.

Commissioners Rupf and Metz abstained since they were not present at the August 24, 2006, Commission meeting.

#### **CHAIRMAN'S REPORT**

Chairman Purdon noted that every member on the Boating and Waterways Commission is a boater. He stated that the Commission will be electing new officers at this meeting and that he enjoyed being the chairman for the last couple of years and knows the new chairman will serve with much enthusiasm.

Chairman Purdon said the Commission serves as the gatekeeper of millions of dollars that are allocated to the Department through the gas tax. The funds, he said, should be segregated to the Department and that should be of concern to everyone that is a citizen, whether a boater or not.

Chairman Purdon thanked Commissioners Clark, Rupf and Metz for attending meetings with 18 legislators on January 17, 2006, in which concerns of the \$27 million transfer to State Parks and Recreation were discussed.

Chairman Purdon noted that there will be discussions on one of the problems that curtail access to the waters for California boaters. The area, he said, deals with the years of waiting for many boaters who are trying to find slips in California. Chairman Purdon stated a comprehensive report was commissioned by the Department of Boating and Waterways and enlightens everyone on the problem. He said there is a problem when a young boating family cannot obtain a slip in many marinas until their kids are off in college. He noted that there is a problem when slip transfers are under LLC's, private corporations, phony partnerships and boat ownership schemes, and particularly when it happens in government owned and operated marinas.

Chairman Purdon indicated the problem could be solved with proper market pricing of the slips according to the size of the slip and the demand for that slip. He said a few slip holders in the state are treated with "privilege" because of the unfair slip policies of government entities and if slip waiting lists cause a boater to wait more than six months to get a slip, then not only is that boater disenfranchised, but the people in that municipality are getting short changed on their revenue from that public asset.

Chairman Purdon reported that access to recreational boating is being limited by NOAA and other government agencies. He asked that boaters keep an eye on the access issues, whether it is converting a public access marina to a private condo project or restricting boats in a certain area.

Chairman Purdon thanked the Department of Boating and Waterways for their support of the Clean Marinas California program. The program, he said, will be certifying its 50<sup>th</sup> marina soon. Chairman Purdon reported that Clean Marinas California program has certified a high percentage of marinas in the past two-and-a-half years and it did not cost taxpayers any money. The program, he said, is completely voluntary and operated by the marina owners and managers with the \$250 marina fee. Chairman Purdon stated the Marina Recreation Association helps with the scheduling and non-financial support is provided from the California Association of Harbor Masters and Port Captains as well as the City of Oceanside, Port of San Diego and Port of Los Angeles. He reported a first comprehensive analysis of all the clean marina programs in the country was completed and published by Boat & Motor Dealer/Dock Age magazine

Chairman Purdon closed his report by saying we cannot take our eyes off the issues of funding the Department, boater access to marinas and the ocean, clean marinas, clean boats, clean water and boater education. When we get these solved in the next few years, we can all enjoy more boating in California.

## **DIRECTOR'S REPORT**

Mr. Tsuneyoshi welcomed new member Douglas Metz to the Commission.

Mr. Tsuneyoshi presented Commissioner Johnson with a plaque for service to the Boating and Waterways Commission. Commissioner Johnson's term on the Commission expires on March 15, 2007.

Mr. Tsuneyoshi announced the Department of Boating and Waterways' new logo which represents the leadership and guidance the Department provides as both an innovator and an advocate for boating access and safety.

He reported on the Department's proposed budget of \$76,690,000 which includes \$12.1 million for public small craft harbor loans, \$12.9 million for boating facility grants, \$6 million for loans to business for the construction of recreational marinas, \$500,000 for grants to local agencies for removal of abandoned vessels, \$10.6 million to counties for boating law enforcement and \$6.2 million for the aquatic weed control program in the Delta.

Mr. Tsuneyoshi announced the retirement of Boating Operations Chief, Dolores Farrell, who retired in December. Ms. Farrell, he said, expanded the boater education program and established herself as an authority in the areas of boating safety and enforcement.

Mr. Tsuneyoshi commented on the letter the Boating and Waterways Commission sent to NOAA objecting to several proposals in the Cordell Banks, Gulf of the Farallones, and Monterey Bay marine Sanctuaries.

He reported that Recreational Boaters of California has agreed to sponsor legislation on a boater safety education law.

Mr. Tsuneyoshi stated there has been no communication from the Governor's Office regarding the letter sent from the Boating and Waterways Commission requesting an audit of the Department of Parks and Recreation. He said there have been several boating stakeholder groups intending to go to the Legislature with a similar request for an audit.

Mr. Tsuneyoshi reported the Quagga mussel, an invasive species, has been discovered in Lake Mead. He said every state has been affected by invasive species in the waterways and the Quagga mussels are the worst to come along. Mr. Tsuneyoshi indicated the Department of Fish and Game, along with the U.S. Fish and Wildlife Service, are taking the lead in addressing the Quagga mussel and are planning a media outreach campaign to educate boaters.

Mr. Tsuneyoshi presented the Department of Boating and Waterways Distinguished Public Service Award for 2006 to Christian Lauritzen. Lauritzen operates the Lauritzen Yacht Harbor in Contra Costa County and provides an extensive one-day boating class for new boaters who berth at his yacht harbor. The Department utilizes Lauritzen for his expertise on the Delta when there is a consideration of closing the Delta to recreational boating to protect public safety and levee integrity. Lauritzen has served as a technical advisor and volunteered his marina to be one of the five pilot locations where the program installed pollution prevention services to be used by Delta boaters and residents. He is a volunteer for the Contra Costa County Sheriff Marine Patrol Reserve and is involved in efforts to abate the pervasive problem of abandoned vessels in the Delta. Mr. Tsuneyoshi commented that California's boaters are extremely fortunate to benefit from the efforts of individuals such as Christian Lauritzen.

Commissioner Rupf commented that Lauritzen is his nephew and both Lauritzen and his sister have contributed much of their time and money in improving the quality of life on the waterways. He said the Lauritzen marina sets a good example on how the private sector delivers service, comfort and safety to the boating community.

Victor Connell, Commodore, District 11 North, U.S. Coast Guard Auxiliary, and Past Commodore Gail Ramsey, congratulated Lauritzen on receiving the Distinguished Public Service Award for his contributions to recreational boating safety. Mr. Connell listed, as follows, the "top five" things that Lauritzen does on a regular basis to assist the Coast Guard Auxiliary in its boating safety mission.

- 5. Allows the Auxiliary vessels examiners to conduct vessel safety checks at his marina. Local Auxiliary members have a standing invitation to enter the premises of the privately owned business to conduct safety checks on boats.
- 4. Has assisted with Hopes Mayday and nuisance radio traffic cases, by maintaining a listening watch at the request of the Auxiliary on his VHF marine radio and with his radio direction finding equipment. Lauritzen has assisted with the Bethel Island nuisance radio traffic case that occurred during a four month period from October 2001 to March

- 2002. Nuisance radio traffic and hoax maydays consume valuable Coast Guard time and response effort and can adversely impact the ability to respond to actual radio calls.
- 3. Operates "Tower Cam" webcam from an elevated position at his marina allowing the Auxiliary a view of the San Joaquin River near the Antioch Bridge. The tower cam helps the Auxiliary to assess weather conditions and see how much fog or rough water there is on a real time basis. On many occasions, the Auxiliary watch officers have been able to view in real time incidents that were taking place within the tower cam service area and could assess whether or not Auxiliary assistance would be necessary or feasible. For example, a boat adrift in the San Joaquin River November 2003 and a barge in Bay Rouge slough, 2004.
- 2. Through his <a href="www.laurtizen.com">www.laurtizen.com</a> website, he provides a readily available source of boating safety information which includes local weather, tide and river information and local chart information, useful tips on safe operation in the Delta and a link to the Auxiliary National website.
- 1. He is a devoted and influential local force for safe and intelligent recreational boat operations in the Delta. In the normal daily course of his business, he reinforces the coast guard message of having proper equipment, maintaining vessels in good condition and boating safety education. He encourages his customers to take Auxiliary safe boating classes, and personally arranges for classroom space at a nearby yacht club and provides refreshments for the students during the class. After his customers complete the eight hour class, he congratulates them and rewards them with a barbeque dinner.

Mr. Connell thanked Mr. Lauritzen for all that he has done and will continue to do for boating safety and the support he has given the Auxiliary in carrying out the Coast Guard mission.

Commissioner Clark congratulated Lauritzen on his award and said he was her first Delta harbor master 25 years ago. She recalled when he took her out on a barge on the 4<sup>th</sup> of July where the barge was shooting the fireworks. Commissioner Clark said she can call him for anything and everything on his cell even when he is hunting in Idaho. She thanked him for everything he has done.

## LEGISLATIVE REPORT

Mr. Johnson reported that there are no bills to report on, since the Legislative session began its session in January.

Mr. Johnson updated the Commission on the mandatory education initiative. He said two stakeholder meetings have been held and we will now be working on the language for the bill. Mr. Johnson indicated Recreational Boaters of California has agreed to sponsor the bill if there can be consensus within the boating community. He said there is a meeting next week and believes there will be a bill introduced this year.

Chairman Purdon stated the meetings January 17, 2007, with the Legislators regarding the \$27 million transferred from the revolving fund to State Parks went well. He invited the Commissioners who attended the meetings to comment on action items they may have.

Commissioner Metz reported the people he met with were very helpful. He said many recommended that a follow up be done to the Governor's Office with regards to the letter sent asking for an audit. Commissioner Metz said one of the recommendations is that the Commission meet with the Secretary of Resources to initiate entering into a dialog with State Parks with the purpose of developing some understanding of what might be an appropriate and fair allocation of funds in the future. He added that the Commission would then apprise the Governor's Office of the problem and seek to convince them that it is appropriate, to the degree possible, to restore the funding allocation and incorporate it into the Governor's Budget May Revision. Commissioner Metz said the burden then would be on the Legislature to overturn the allocated amount, whereas, if it is not in the budget, the burden is on the Department and other allies to overcome it. He added another recommendation was to follow up with one-on-one meetings with the members of the budget committees, respectively, of the Assembly and the Senate. Commissioner Metz indicated there are still some critical meetings that are necessary.

Commissioner Clark reported that she attended some of the meetings as well and was able to provide the legislators with background information and asked for their assistance. She said many offered assistance, comments and input; and many were surprised that it had taken so long to bring the matter to light. Commissioner Clark asked the boating industry people in attendance to take the opportunity to meet with their representative and let them know what kind of effect the transfer of money is going to have.

Commissioner Rupf reported that educating legislators who will pass judgment on any budget issues is making ground. He said, Carol Baker, Assembly member Nunez office, was very candid about the \$27 million issue and she stated there has to be a demonstrated willingness to sit down with State Parks and discuss how and why the transfer needs to be changed, so when the Commission comes back to the Legislature, the Legislature is comfortable that the Department and Commission have made a legitimate effort to be sensitive to the context of the issue.

## CONSIDERATION OF PUBLIC LOAN

Mr. Flood presented to the Commission for its advice and consent the following request for a public loan.

## San Francisco Marina-West Harbor

The City and County of San Francisco has applied to the Department of Boating and Waterways for a loan of \$16,500,000 to improve the West Harbor at the San Francisco Marina. This loan concerns phase III funding of \$6,000,000. Final phase funding of \$5,300,000 is expected in FY 2007/08.

The San Francisco Marina is located on the northern waterfront of the City of San Francisco in the Marina District. The marina is 1.5 miles east of the Golden Gate Bridge and just west of Fort Mason. The marina also adjoins lands of the Golden Gate National Recreational Area.

Brad Gross, Manager of Marina Operations, San Francisco Marina was available to answer questions from the Commission.

Mr. Flood indicated the proposed project would entail the following: 1) demolition of existing berths and construction of reconfigured berths in the West Harbor; 2) upgrading of electrical and water dock utilities; 3) installation of new barrier-free access gangways with security gates; 4) construction of a new breakwater; 5) replacement of the revetment; 6) mole removal; 7) dredging; and 8) improvement of buildings.

Mr. Flood stated that staff recommended that the Commission consent to the \$6,000,000 public loan to the City and County of San Francisco to improve the West Harbor at the San Francisco Marina.

Commissioner Johnson asked for a summary of the \$5,000,000 already given for the project. Mr. Gross replied the money is still encumbered. He added many of the tasks were held up by the EIR process which was just certified by the Planning Commission last week. Mr. Gross stated that he was meeting later that day with the Recreational and Park Commission in San Francisco and will give them the same information he is giving here and let them accept the EIR. He said there is a 30-day period for appeals and the Board of Supervisors will have 30-days to hear the appeals. Mr. Gross indicated once the entire EIR process is done, he then can complete the loan contracts and actually start to use the money.

Mr. Gross reported the fees have increased in the West Harbor a total of 43% since the inception of the loan documents, and in the east harbor they have increased 32%. He added there is a five-year increase plan and next year the West Harbor will increase another 4% and the east harbor will increase another 12%. Mr. Gross stated wait list fees have risen 650% and the transfer fees have been raised between 75% and 200%.

Chairman Purdon asked what the changes have done to the wait list. Mr. Gross responded that the harbor wait list was \$10 a year, and approximately five years long. He said there were 500 people on the wait list when the list was frozen because of the pending renovation. Mr. Gross stated the list was reopened with an increase in fees and everybody on the list was given an opportunity to reinstate their existing position and there are now 160 serious boaters on the wait list. He added the demand for slips are: zero for the 20-foot list, about 15 boaters on the 25-foot list, and the bulk of boaters are on the 35-45 foot list.

Chairman Purdon asked how many berths there will be for the \$8,000,000. Mr. Gross responded 325 berths in the first phase.

**MOTION:** It was moved by Commissioner Johnson and seconded by

Commissioner Clark that the Boating and Waterways Commission approve the request from the City and County of San Francisco for a phase III public loan of \$6,000,000 to make improvements to the West Harbor at the San Francisco Marina. The motion carried unanimously.

Brad Gross thanked the Commission.

#### CONSIDERATION OF PUBLIC GRANT

Mr. Flood presented to the Commission for its advice and consent the following request for a public grant.

# **Gridley Boat Launching Facility**

The City of Gridley has applied to the Department of Boating and Waterways for a public grant of \$935,000 to make improvements to the Gridley Boat Launching Facility. This grant of \$635,000 is phase I funding for this project.

The Gridley Boat Launching Facility is located along the Feather River in Butte County, about 2.5 miles east of the City of Gridley.

Mr. Flood indicated the proposed project would entail the following: 1) demolition of the existing boat launching ramp and construction of a new one-lane boat launching ramp; 2) installation of two new boarding floats; 3) construction of a new parking area; 4) construction of a restroom and sewer lift station; 5) installation of a new fish-cleaning station; 6) installation of slope protection; 7) provision for drainage; 8) installation of electrical and lighting; 9) security access for the site; and 10) signs.

Representing the City of Gridley and available to answer questions from the Commissioners were: Alvin Davis, Director of Public Works, City of Gridley; Jack Slota, City Administrator; Brad Wilkie, Finance Director; and Bruce Nash, City Engineer.

Mr. Slota reported he met with Commissioner Clark earlier in the week and has prepared some information she had requested. He reviewed and gave the Commission members an eleven-page report on the boat-ramp project. Mr. Slota indicated the present fee structure will have to be changed to comply with state requirements and that the current fee structure is \$25 initial, \$10 annual renewal for permits, and \$100 initial, \$50 annual renewal for Fishing Guide. Mr. Slota said there are 447 individual permit holders and 12 fishing guides who use the ramp on a regular basis. He added that a window sticker is issued and a key is given for the locked gate which was installed because of vandalism; the gate is not visible from the highway and is in a secluded area.

Chairman Purdon asked about the gate and if the gate is located at the entrance of the parking lot or at the ramp. Mr. Slota responded it is the first gate you come to and then you proceed to the boat ramp.

Mr. Flood stated that staff recommended that the Commission consent to the \$635,000 public grant to the City of Gridley to improve the Gridley Boat Launching Facility.

Commissioner Clark reported she visited the proposed project site and indicated the boat ramp is used heavily and recommends approval of the grant.

Commissioner Rupf asked if the gate will remain in place. Mr. Slota responded that other means instead of a gate will be looked into with the help of Department staff. Mr. Flood added the Commission has approved a maximum of \$13 total fees for launching and retrieving a boat at any of the facilities the Commission approves. He said the \$25 initial fee covers an entire year but exceeds the \$13 maximum. Mr. Flood stated if the Commission would approve the current fee structure they would like to keep it, otherwise they will adjust it to the \$13 and look into another way for people to come in and out on an annual basis.

Commissioner Nagata asked if the initial fee covers the cost of the card. Mr. Flood responded it covers the cost of the key, processing, sticker and card. He said a problem the Department encountered is, if you drive out to the site and the gate is locked, you have to go back to town, which is about two miles, to get a key. Mr. Flood stated they are looking into some type of gate which will take a credit card or some other type of payment for day users.

**MOTION:** 

It was moved by Commissioner Clark and seconded by Commissioner Rupf that the Boating and Waterways Commission approve the request from the City of Gridley for a phase I public grant of \$635,000 to make improvements to the Gridley Boat Launching Facility and approve the City of Gridley's current fee structure and the City will look into making adjustments to the security and fee structure in the future. The motion carried unanimously.

#### CONSIDERATION OF PUBLIC GRANT FUNDING INCREASE

Mr. Flood presented to the Commission for its advice and consent the following request for a public grant funding increase.

# **Lake Kaweah Boat Launching Facility**

The United States Army Corps of Engineers has applied to the Department of Boating and Waterways for a change in funding level for a previously approved public grant for the Lake Kaweah Boat Launching Facility.

Lake Kaweah is located in Tulare County on the Kaweah River in the Sierra Nevada foothills about 56 miles southeast of Fresno, and about 21 miles east of Visalia.

Phil Defenbaugh, Park Manager, and Barbara Cooper, Park Ranger, were available to answer questions from the Commission.

Mr. Flood reported the project was approved by the Commission a few years ago and originally put in because the top of the dam was being raised by 21 feet and the current project at the site would be underwater. The Commission approved a high-water addition to the existing ramp. Mr. Flood said the project was before the Commission again and it was requested that the project be moved to a new location and a new project be done. It was approved three years ago and the new project was going to be scaled down so the Department withheld \$500,000 from the original grant amount. The US Army is requesting the return of the \$500,000 so that they can reroute the access road to a new location where it will be safe to get in and out of the project site.

Mr. Flood stated that staff recommended that the Commission consent to an additional \$500,000 for the previously approved grant to the U.S. Army Corps of Engineers for improvements to the Lake Kaweah Boat Launching Facility, for a total public grant amount of \$1,930,000.

Commissioner Rupf reported he has visited the project site twice, once on a Commission field trip and once when the adjustment was necessary. He stated it is a worthwhile project and recommends approval but noted his disapproval of grant money used for landscaping. Commissioner Rupf indicated that Parks should take care of landscaping. Mr. Defenbaugh stated that landscaping is restricted to replacing oak trees.

**MOTION:** It was moved by Commissioner Rupf and seconded by

Commissioner Johnson that the Boating and Waterways Commission approve the request from the U.S. Army Corps of Engineers for a change in funding level of \$500,000 for a previously approved public grant for the Lake Kaweah Boat Launching Facility. The motion carried unanimously.

## CONSIDERATION OF PUBLIC LOAN CHANGE OF SCOPE

## **Stockton Waterfront Marina**

The City of Stockton has applied to the Department of Boating and Waterways for a change in project scope for a previously approved loan for the Stockton Waterfront Marina.

Jerry Scharlin, Redevelopment Manager, and Ken Johnson, TranSystem, were available to answer questions from the Commission.

Mr. Flood indicated the revised project would entail the following: 1) construction of 66 wet berths, 2) construction of 890 linear feet of guest dock on the north side of the Stockton Channel, 3) construction of 690 linear feet of guest dock on the south side of the Stockton Channel, 4) installation of two gangways with security gates (one barrier-free) on the north side, and the installation of seven gangways with security gates (three barrier-free) on the south side, 5) construction of a 150 space dry stack storage building, 6) construction of and/or repaving of 41,000 square feet of parking area for 46 single parking spaces, 7) construction of a two-unit restroom, 8) installation of dock utilities, including electrical, water, fire, and communication lines, 9) construction of 83,000 square feet of walkway and 2,100 linear feet of railing, 10) installation of lighting and electrical, 11) the addition of a security system, 12) landscaping and irrigation, and 13) signs and ancillary items.

Mr. Flood stated that staff recommended that the Commission consent to the change in scope for the previously approved loan to the City of Stockton for improvements to the Stockton Waterfront Marina.

Chairman Purdon asked how the City of Stockton is going to get the revenue to pay off the loan. Mr. Scharlin responded that the City of Stockton has been working with the stakeholders and had market studies done so changes were made to larger berths. He said the 66 slips are at the high end and there is a tremendous demand for covered berths and there will be no doubt that the City can demand high rates because there is going to be limited supply and very high demands for the covered berths. Chairman Purdon asked if the boats will be permanently berthed there. Mr. Scharlin responded that the 66 slips will be permanent berths.

Chairman Purdon asked about the contract with the City of Stockton. Ms. Fisher responded that she had not reviewed the contract and had some concerns in the past about the kinds of security that the City of Stockton has offered. Mr. Scharlin added that there is a loan that exists and all the collateral issues have already been worked out and were negotiated over a period of a year or two.

Commissioner Clark reported she had the opportunity to go to Stockton to look over the project and meet with the principals. She said she was concerned that the project was scaled down to the 66 slips, but it is a destination area where people go to enjoy the waterfront and jazz festival and boaters will actually be able to get a guest dock. Commissioner Clark added she felt comfortable with the project since there are plans for expansion and possible docks and wet slips in the 30-40 foot range. She said boats in the 50-80 foot range that the City of Stockton is trying to accommodate are having a difficult time finding berths.

Commissioner Metz asked if the \$1.1 million reserve account is in addition to a reserve for maintenance and dredging. Mr. Scharlin responded that was correct and any draw from the reserve account has to be refilled from the general fund, so there will always be a \$1.1 million reserve.

Commissioner Rupf said he is troubled by the reduction in slips. He said in 2002 when the Commission first acted on this project there were 298 boating opportunities for berths and now

there are 66 plus temporary moorage. Mr. Flood responded that it was never anticipated the total 298 would be completely full and the City of Stockton is anticipating adding more slips as more money becomes available.

Commissioner Rupf stated once a loan or a grant is approved then changes are almost always added and asked if other projects were lost in the competition for a loan or grant in 2002. He asked if there is a policy on changes to protect the competition. Commissioner Rupf stated this proposed project is very different from what was approved. He added there is about \$1.5 million that is on a 50-year loan. Mr. Flood responded that the 50-year portions are for other non-revenue-producing facilities and not the docks and that because of phase funding other projects many have been slightly delayed but not cancelled. He said the Department tries to fund all of the feasible projects.

Ms. Fisher commented that when general fund money is taken as collateral, it raises a concern about whether or not there is a possible constitutional debt limit violation. If there were one, she added, then it would void the contract altogether. Ms. Fisher stated one way to salvage the situation is if the contract calls for priority payment, so that payment of the loan comes first out of gross revenues, before any money is expended for operations and maintenance. She said the Department has the authority to require priority payment and this is an appropriate situation where priority payment should be required. Mr. Scharlin responded that the City of Stockton's attorneys have reviewed the contract and have dealt with all the constitutional issues and an agreement/loan already exist executed by both parties. He said what is being discussed here is the scope. Commissioner Nagata agreed with Mr. Scharlin, and the issue is whether the 66 slips will generate the revenue that the 296 were going to generate. Mr. Flood added there are additional revenues coming in from the dry storage and the guest docks.

Commissioner Nagata asked if there are no larger slips, how the City of Stockton knows there is a big demand for them. Mr. Scharlin responded there were specific marketing studies done where it indicated what the vacancy rates are for various size slips around the area.

Mr. Ken Johnson reported that there have been about four or five market studies done in the last five or six years and it involved all marinas, private and public within a 20 miles radius of Stockton. The studies, he said, found there are no vacancies for covered slips for boats in the 50-60 foot range, so the demand will be high and there are not many 80 foot slips within 20 miles of Stockton. Mr. Johnson said the studies indicate they are on target with vacancies and the rates that are going to be charged will be within the market rates. He indicated the rates will be higher when the marina is built and the loan will still be the same. Mr. Johnson reported the guest docks will be used so that during normal processes boats would be side tied and during busy weekends or big events, boats would be stern-tied so that they can be used as back-up mooring, and there will be utilities for all of the boats. So, he said, it will not be just 1200 feet of side-tied dock which might take 30 to 40 foot boats and more if they are stern-tied.

Commissioner Clark agreed that Stockton is a destination mooring as opposed to the normal rental type of mooring. She indicated that she has discussed all the issues that are being brought up today with the principals and recommends approval of the change of scope.

Chairman Purdon asked staff if it would be prudent to require the Department be first paid and have the contract redone. Mr. Flood responded that the contract may already state that the Department be paid first.

Chairman Purdon asked about the dry stacked facility of 125-150 and asked if there should be 250 or more to make it work based on cost and maintenance. Mr. Ken Johnson responded it is not a "loss-leader" and it is expected to make money as soon as it is filled which will not take too long. Chairman Purdon asked if there will be a place for trailers. Mr. Ken Johnson said there is room for that near a launch ramp.

Commissioner Metz stated since this proposed project has been changed substantially in scope and in character and there has been an agreement reached concerning the contract and now at the end of the line the Commission is asked to review the project. He said would it not be better to get the Commission's prior approval with respect to the terms and agreement so we can then perfect the contracts before consummation based on counsel. Commissioner Metz stated he is raising this procedural question so no one will be uncomfortable saying the Commission may want something in the contract in light of the change of scope that could make it a deal breaker. He added the Commission has an obligation as stewards to provide the best assurances of repayment.

## **Public Comment**

Mr. Ed Stetson, Commodore, Marina West Yacht Club, stated he had to leave Stockton when he bought a 60 foot boat because there was no place to berth it. He commended the people who have worked on this project for many years for the way they have involved and solicited the input of the local boaters. Mr. Stetson said the initial plan did have a big number of berths but those types of boats are not being used anymore and if they are that size, they are not left on the water but going into the dry stack or the homeowner's driveway. He said the City of Stockton does not need any more berths for 30-foot boats, since there are empty ones and the larger size is what is needed. Mr. Stetson stated the City of Stockton has done a tremendous job of redeveloping downtown and is poised to be a significant destination site in the Delta and the marina is essential for this to continue. He said the downtown area was redeveloping quickly but with the delays in getting started with the marina, it has leveled off and hopefully with the approval today, there will not be any more delays.

Mr. Jack Michael, Marina West Yacht Club, spoke in support of the proposed project. He said everyone looks for covered slips in the Delta and, because of the difference in weather and damage to boats from the heat, etc, covered slips are very important to Delta boaters and they will not rent a slip that is not covered. Mr. Michael said downtown Stockton can be an absolutely wonderful destination for boaters; boaters like to be by themselves in the Delta but also like to have a place to go. He said the guest docking arrangement not only enables future growth but satisfies the need for boaters who simply want to come to the City of Stockton for an afternoon or evening and enjoy what is in the city. Mr. Michael said there was no guest docking in the prior plans, this change is very important. He strongly encouraged the Commission to approve the change in scope.

Chairman Purdon expressed his concern about the \$3,200.00 per linear foot, which is the cost for building the 66 slips. He understands they are single slips and will have very expensive covers, but he expressed concerns about the repayment of the loan. Chairman Purdon said he would like to add the caveat that the Department has priority payment on the loan with the City of Stockton to back it up as the borrower; otherwise he said he would have a hard time supporting this project. Commissioner Clark responded that she is comfortable with adding that condition to the motion.

Mr. Scharlin stated he sensed that the Department is already in that position and he is worried that it would delay the project with all the legal language that will have no real effect. Mr. Flood reported that the Department will be able to work it out.

Commissioner Clark said with Mr. Flood's assurance, she would have no problem with amending her recommendation.

Commissioner Nagata added that he agreed with the Chairman's recommendation.

**MOTION:** It was moved by Commissioner Clark and seconded by Commissioner Nagata that the Boating and Waterways Commission approve the request from the City of Stockton to the change of scope for the previously approved loan to the City of Stockton for improvements to the Stockton Waterfront Marina, but contingent upon the contract stating that the Department of Boating and Waterways will have priority payment on the loan. The motion carried unanimously.

## **OLD BUSINESS**

## **Marina Procedures to Allocate Slips to Boaters**

Mr. David Johnson introduced the NewPoint Group, which conducted a study for the Department on marina practices and procedures to allocate berthing slips. He summarized that city councils and boards of supervisors have adopted local ordinances on this topic and/or the harbormaster has developed written processes on how boaters obtain berths. Mr. Johnson said the Department has concluded that the locals have developed necessary rules and regulations and the issue should not be something that the Legislature should be involved with.

Ms. Caroline Godkin, associate, NewPoint Group, outlined the draft report entitled "Marina Practices and Procedures to Allocate Berthing Slips to Vessel Owners" which was given to the Commission members. Ten California public marinas were surveyed and she pointed out the following on a PowerPoint presentation:

## Background

- > Demand for slip rental agreements in public marinas exceeds supply
- The Legislature raised concerns that individuals may be by-passing formal waiting list and "buying" access to slips
- For ten public marinas, the study investigated:
  - Ordinances, procedures and practices for slip allocation
  - Methods by which a vessel owner can access a slip without being on a waiting list
  - Grand Jury investigations into waiting lists and slip allocations

## Methods to obtain a slip

- Each Marina's rules are governed by city or county ordinances (or by harbor rules pursuant to the marina's jurisdiction ordinances)
- No marina in the study allows a slip rental agreement holder simply to sell the agreement to a third party
- There are two methods that a vessel owner can use to by-pass the waiting list and obtain access to a slip in some marinas in the study
- Four marinas that allow slip rental agreement transfer with vessel sale charge a transfer fee

## Slip transfer policies

- Marinas contacted have considered issues surrounding the transfer of slip rental agreements
- If transfers along with the sale of a vessel are allowed:
  - Individuals can by-pass the waiting list through the purchase of a vessel (or share a vessel)
  - Marinas can recoup some of the slip's intrinsic value by charging a transfer fee
  - Vessel sales are facilitated as new vessel owners can access a slip
- If transfers along with the sale of a vessel are not allowed:
  - When a waiting list is the only way to access a slip, marina owners/operators believe there is equal, transparent access to slips
  - But this requires effort by marina staff to "police" slip and vessel usage

## Slip advertisements

- A simple internet search yielded advertisements for "slips available"
- These advertisements are potentially misleading and involve a vessel sale or sale of a share in a partnership
- If a vessel or share of a vessel is sold, slip transfer could be permissible under some local ordinances or regulations

## **Summary**

- Local ordinances or harbor rules regulate slip transfer practices
- In five or ten marinas contacted, it is possible to obtain a slip without being on the waiting list by purchasing either an entire vessel or share a vessel already in a slip

Commissioner Clark asked about the Grand Jury results in Santa Cruz. Ms. Godkin responded the Grand Jury investigated how well-documented the waiting list procedures were. The Grand Jury did have some minor recommendations, which Santa Cruz has adopted. Commissioner Clark asked if Santa Cruz has a very extensive wait list and allows transfers. Ms. Godkin responded Santa Cruz has an extensive wait list and does not allow transfers.

Commissioner Metz stated that Department staff has indicated that this issue should not be a legislative concern. He asked if some type of action from the Commission in terms of policy or conditioning loans and grants with adherence to a policy should be implemented. Chairman Purdon responded it should be looked into.

Chairman Purdon asked how would black market schemes work for transferring slips for marinas that do not have a transfer policy. Ms. Godkin responded boat owners would change partnership on the boat to include a third party and eventually the third party would be the user of the boat. Chairman Purdon said it seems the only solution is the concept of market rate for rents.

## **Public Comment**

Mr. Brad Gross, Manager of Marina Operations, City of San Francisco, reported he was one of the interviewees. He said he did get a draft copy of the report and forwarded it to all the interviewees and asked them to look and see whether their comments were reflected correctly.

Mr. Gross said, between the executive summary and the actual draft, some of his comments did not match. He asked that an edit be done before it becomes a final document. Mr. Gross stated that he has been told that the Department and Commission are not able to dictate what the actual slip rate is according to the Harbors and Navigation Code, and that fees charged need to be enough to pay back the loan. He added, as a staff person, he would not be opposed to being directed as to what fees he must charge at his facility.

Mr. Gross stated many individuals addressed the topic of the black market issue at the previous Commission meeting. He said as a manager of a facility, he would lose complete and total

control of who is the legal responsible owner of a vessel, unless there were an accident or something that would give him the opportunity to do an investigation. But if the boater was having a good time, obeying all the rules, and doing everything right, he would not know who owns the boat and who is ultimately responsible. Mr. Gross said he would be dealing with the same person year after year and can guarantee that the same person will own the same boat or a series of boats forever and when that person passes on, it will be passed on to his son, wife, etc. He said many of the larger vessel owners have the means to hire the appropriate people to write up contracts and agreements to keep ownership underground and that would eliminate the State's ability to collect sales tax and change the marinas' ability to collect revenues.

Chairman Purdon responded that he categorically disagrees.

Mr. Ted Warburton, Director Marina Services, City of Brisbane Marina, addressed the Commission. He said he had to come to the meeting today because the Department should not be looking at local government issues that are already transparent with respect to public meetings. These kinds of policies, he said, are adopted at the local level with input from stakeholders and boaters and are brought before a council in open public sessions and adopted with the support of the general public through that policy. The State of California might now look at it and make a policy that possibly is contrary to local governments.

Mr. Warburton stated that there are a lot of projects in California that the Department of Boating and Waterways has no money to fund. He said he is disappointed that the Department spent money, resources and staff to do this report when it is completely unnecessary. Mr. Warburton said if an applicant for a berth in a marina has an issue relative to the rules and regulations and policies of the marina, there are administrative abilities, judicial and legislative abilities for them to have some relief. The relief, he said, was pointed out in the report and spoke to the fact that a Grand Jury had looked at Santa Cruz and Santa Barbara. Mr. Warburton said that, speaking as a public administrator, he believes it is ill use of the system and the report has indicated that there is no cookie cutter approach to one-size-fit-all with respect to administrating slips in the State of California. The demand, he said, is relative to the local area.

Mr. Warburton added that southern California has a huge demand and not many slips available. He pointed out the study reported that the ten marinas have some similarity but they are different on how the waiting list is administered. Mr. Warburton added he hopes the Department does not stray off course when looking at policy issues.

Chairman Purdon stated the Department and Commission do have a responsibility to at least give it the light of day so that the people of California know what is going on, particularly in the government marinas. He added there may not be anything that can be done legislatively, or that can be planned on doing, within the immediate government environment. Chairman Purdon stated that in the areas where the government marinas are charging, the solution to the access to boating is to charge market rates. He said not every marina is 100 % full with a waiting list and sometimes those marinas have to lower their rates in order to attract people and that is called competition. Chairman Purdon added that boating access is an issue the Commission should be concerned with.

Mr. Johnson said that the Senate told the Department that they will ask during the budget process in March or April about what has been done on this issue. He said the issue is very complex and the best way was to do a report and be able to hand it to the Legislature to resolve their concerns.

Commissioner Clark asked if the draft study will be updated and corrected, so that it is actually given the input of the harbormasters that were interviewed, and then sent to the Senate subcommittee. Mr. Johnson said before it is sent to the Legislature, permission has to be given by the Governor's Office and Resources Agency.

Commissioner Rupf said he believes the Commission has the authority and obligation to pursue anything that may affect fair and equitable access by the boaters. He asked what the legislation that was suggested by the three senators would do. Mr. Johnson responded there were no details on any proposed legislation. Chairman Purdon added the issue is what the Legislature can do on this subject and he is skeptical about what they can do. Chairman Purdon said he is not in favor of dictating to people what their berthing rates should be. Commissioner Rupf said it is appropriate anytime the Commission grants a loan or a grant for a question to be asked about how long their waiting list is and what the current berthing rates are. Chairman Purdon added with regards to transferability, one Grand Jury did say they should not have that policy but the city council did otherwise. Mr. Warburton asked who they are going to do it to when you talk about legislation, the ten marinas that are in the report, or all of the boaters in California. He said it would not be very successful if you go to Joe's marina, a private operator, and tell him he has to have a wait list and you will not have the authority to transfer. Chairman Purdon said he is trying to point out that if you do not ask for market rent, you are cutting out the public from access and you are leaving on the table the money that belongs to the people of California and the cities or municipalities that own the marina.

Chairman Purdon asked that the report be updated with comments made today.

Ms. Diane Isley, President, California Association of Harbors Masters and Port Captains, asked that both of the Grand Jury findings be presented in the report and not just the negative one. She added the report should be updated with the comments made to make sure the report is accurate.

Chairman Purdon asked what the next step will be. Mr. Johnson responded the report will be finalized and be sent to the Resources Agency and the Governor's Office for approval.

Chairman Purdon thanked everyone for their comments and thanked NewPoint for doing the report.

## **NEW BUSINESS**

# **Election of Officers**

**MOTION:** It was moved by Commissioner Rupf and seconded by

Commissioner Johnson to nominate Commissioner Clark

as Chairperson of the Boating and Waterways Commission. The motion carried unanimously.

**MOTION:** It was moved by Chairwoman Clark and seconded by

Commissioner Nagata to nominate Commissioner Rupf

as Vice Chairman of the Boating and Waterways Commission. The motion carried unanimously.

#### COMMISSIONER ANNOUNCEMENTS

Commissioner Johnson reported the Long Beach Marina is scheduled to be completed in July and there will be a grand opening sometime in April. He said he will let everyone know when he has more details.

Chairwoman Clark reported that she has been asked by the Governor's Office to serve on a task force for the Delta Vision. She said she will be in a position to provide boater comments and have access to the process. Commissioner Clark stated she hopes to have one of the Commission meetings in the Delta this year, so everyone can take a look on what is going on there.

After discussion, the following dates for the Commission meetings were scheduled for 2007. March 14 and 15 in Dana Point; May 22 and 23 in Sacramento; August 9 and 10 in San Francisco; October 2 and 3 in Shasta; December 4 and 5 in San Diego.

## **ADJOURN**

Chairwoman Clark adjourned the meeting at 12:02 p.m.

Raynor Tsuneyoshi, Secretary